

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BIOMEDINO, LLC,

Plaintiff,

v.

WATERS CORPORATION, *et al.*,

Defendants.

Case No. C05-0042L

ORDER DENYING PLAINTIFF'S
MOTION FOR COSTS AND
ATTORNEY'S FEES

This matter comes before the Court on "Plaintiff Biomedino's Motion for Taxation of Costs and Attorneys' Fees." Dkt. # 84. Plaintiff argues that the Rule 11 motion filed by Waters Technologies Corporation on May 19, 2005, was without reasonable basis and was filed for the improper purpose of multiplying the proceedings against a financially inferior opponent. Plaintiff seeks an award of \$21,307.95 under Fed. R. Civ. P. 11(c)(1)(A), 28 U.S.C. § 1927, Local Civil Rule 54(d), and the Court's inherent powers to compensate it for the fees and expenses incurred in opposing Waters' Rule 11 motion.

The fact that defendant's motion for sanctions was unsuccessful does not mean that it was frivolous, presented for an improper purpose, or otherwise filed in bad faith. From defendants' point of view, the evolution of plaintiff's infringement contentions suggested a failure to perform a pre-filing inquiry which, when coupled with Waters' as-yet untried conviction that plaintiff's claims are without merit, justified the filing of a Rule 11 motion under

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1 established Ninth Circuit law.¹ Plaintiff has not shown that Waters' motion was the result of
2 frivolity, improper purpose, or bad faith.² The motion for attorney's fees and costs is, therefore,
3 DENIED.

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5 DATED this 1st day of December, 2005.

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8 Robert S. Lasnik
9 United States District Judge
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22 ¹ In the Ninth Circuit, a complaint violates Rule 11 if it is "*both* baseless *and* made without a
23 reasonable and competent inquiry." Moore v. Keegan Mgmt. Co., 78 F.3d 430, 434 (9th Cir. 1996)
24 (quoting Townsend v. Holman Consulting Corp., 929 F.2d 1358, 1362 (9th Cir. 1990)) (emphasis added
in Moore).

25 ² Plaintiff's demand for fees and costs pursuant to Local Civil Rule 54(d) is without merit. No
26 judgment has been entered in this matter.